

## **101 KAR 2:230. Kentucky Employee Mediation Program.**

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(7)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.025(3)(c)2.c. requires the Personnel Cabinet to provide dispute resolution assistance to state employees and state agencies. KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This administrative regulation establishes the operational procedures for the mediation program.

Section 1. Establishment of the Kentucky Employee Mediation Program (KEMP). The Personnel Cabinet shall establish and administer the Kentucky Employee Mediation Program to coordinate mediations and the State Government Mediator Pool, as established in Section 4 of this administrative regulation, in state agencies and provide them with additional services.

Section 2. Eligibility for Services. (1) An employee or supervisor may request mediation services through the Kentucky Employee Mediation Program in order to resolve workplace issues. The request shall be made using the Mediation Request Form.

(2) Participation by all parties involved in the mediation sessions shall be voluntary. Each party shall sign the Agreement to Mediate and the original, signed agreement shall be kept in the mediation file.

(3) Employees shall be entitled to obtain mediation services without interference, coercion, or reprisal.

(4) Participation in mediation sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(5) Participation in mediation shall not preclude an agency from taking disciplinary or corrective action as needed in dealing with job behavior or job performance problems.

(6) Participation in a mediation shall not affect the filing timeframes for a grievance with the cabinet or agency or appeal with the Personnel Board.

Section 3. Mediation Session Procedures. (1) Mediation sessions shall be conducted by mediators in the state government mediator pool who do not work in the participant's employing agency.

(2) Mediation sessions shall be scheduled by the Kentucky Employee Mediation Program after receipt of the request to mediate and confirmation of agreement to participate at a time convenient for all participants.

(3) The Kentucky Employee Mediation Program shall provide the participants with the name of the certified mediator. The participants may request another mediator if the appointed mediator has a conflict of interest. The scheduled mediation session may be rescheduled with written approval by participating parties.

(4) The participants shall ensure that all parties who have the authority to approve and implement the final mediation agreement are present at the mediation.

(5) Participation in mediation shall constitute an agreement by the parties that all offers of compromise, promises and statements made in the course of the mediation session shall not be offered as evidence or argument at any subsequent hearing or trial of the subject matter of the dispute.

(6) The content of the mediation sessions shall remain confidential as permitted by state and federal law.

(7) All contents of the official mediation file, including original, signed final agreements, shall

be the property of the Kentucky Employee Mediation Program.

(8) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the mediated matter.

(9) The Kentucky Employee Mediation Program or the mediator may decline the request for mediation for reasonable cause, issue a continuance of the mediation, or terminate a mediation session.

(10) Final mediation agreements shall be reduced to writing, signed by the mediator and participants.

(11) All final mediation agreements or reports from mediations referred by the Personnel Board shall be filed with the board by the Kentucky Employee Mediation Program.

(12) The Kentucky Employee Mediation Program shall not oversee compliance with final mediation agreements.

(13) Upon request and following the conclusion of the mediation session, the Kentucky Employee Mediation Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

Section 4. State Government Mediator Pool. (1) The Kentucky Employee Mediation Program shall establish and provide oversight for the State Government Mediator Pool including training, comediation, certification, and technical assistance services.

(2) The State Government Mediator Pool shall consist of state government employees who volunteer to serve and who have been certified by the Kentucky Employee Mediation Program.

(3) The Kentucky Employee Mediation Program shall establish specific certification criteria based on completion of the following:

(a) Minimum of forty (40) hours of general mediation training;

(b) Minimum of six (6) hours of continuing education per year;

(c) Minimum of twenty (20) hours of actual mediation experience; and

(d) Compliance with the Kentucky Employee Mediation Program's Standards of Professional Conduct.

(4) The Kentucky Employee Mediation Program shall not certify any person as a mediator if the criteria of subsection (3) of this section are not met.

(5) Mediators may use state time to conduct mediation sessions with the approval of the appointing authority. The mediator's employing agency shall pay reimbursing travel expenses in accordance with the provisions of 200 KAR 2:006.

(6) The Kentucky Employee Mediation Program shall maintain a current listing of certified state government mediators.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Mediation Request Form", February 2008;

(b) "Agreement to Mediate", February 2008; and

(c) "KEMP Standards of Professional Conduct", February 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained from the cabinet's Web site at [www.personnel.ky.gov/](http://www.personnel.ky.gov/). (34 Ky.R. 1591; Am. 2089; eff. 4-4-08.)